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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

RUBEN MICHAEL BALTAZAR,

Defendant and Appellant.

C060776

(Super.Ct.No.
08F01104)

ORDER MODIFYING
OPINION AND DENYING
REHEARING; NO CHANGE
IN JUDGMENT

By written opinion filed on December 15, 2009, this court modified the judgment imposed against defendant, and affirmed the judgment as modified.

Defendant petitions for rehearing, asserting the opinion is deficient in a number of respects. Among other things, defendant says that, in responding to his claim that the trial court erred in excluding evidence which would have impeached the testimony of defendant's 78-year-old grandfather, Neil Shelton, the opinion "does not address one of the four pieces of evidence discussed in the briefing." This refers to argument in his opening brief

that "a portion of Mr. Shelton's application for the restraining order [against defendant] stated [defendant] stole Mr. Shelton's checks. Defense counsel had evidence that would demonstrate this accusation was false, and that others were guilty of stealing the checks. Over objection, the court refused to allow this impeachment evidence. . . . [T]his evidence could have destroyed the prosecution's case because it would have destroyed Mr. Shelton's credibility. The court erred in failing to admit the evidence."

An appellate court must address only those arguments that are presented under a separate heading or subheading summarizing the point to be made. (Cal. Rules of Court, rule 8.204(a)(1)(B).) Therefore, the fact an appellate opinion does not include analysis of a point made in passing under a heading that does not encompass the point is not a ground for rehearing. (See *Opdyk v. California Horse Racing Bd.* (1995) 34 Cal.App.4th 1826, 1830-1831, fn. 4.)

The argument quoted above from defendant's opening brief was made in the fourth subsection of an argument titled, "Excluding impeachment evidence of Mr. Shelton's conviction for welfare fraud and forbidding defense counsel from introducing evidence to show Mr. Shelton falsely accused [defendant] and had accused others of the same crimes deprived [defendant] of his constitutional right to confront the witness against him, and the errors were not harmless beyond a reasonable doubt." (Caps. omitted.) The introduction to this argument contains a summary of the contentions raised therein: defendant should have been allowed to impeach Shelton with (1) his welfare fraud conviction, (2) evidence that, contrary to Shelton's testimony at trial, someone other than defendant stole the jewelry

of Shelton's wife, (3) evidence that Shelton, who accused defendant of stealing Shelton's credit card, also accused Michelle Baltazar of the theft.

The argument quoted above--i.e., the court should have allowed defendant to impeach Shelton with evidence contrary to an accusation made by Shelton in his application for a restraining order--was not a point summarized in the heading or in the introductory subheading of the argument. Thus, this court was not required to address it.

Nevertheless, we exercise our discretion to include an analysis of the point, by modifying this court's opinion to address the claim of error. However, defendant's other challenges to the opinion lack merit; thus, we decline to address them.

This court's opinion, filed on December 15, 2009, is modified as follows:

On page 17 of the opinion, after the last sentence in part IV, add the following paragraph:

We reject defendant's assertion that the trial court erred by precluding defendant from impeaching Shelton regarding his claim, made in an application for a restraining order, that defendant stole checks from Shelton. Asserting the evidence could have shown that "others were guilty of stealing the checks," defendant believes the evidence would have "destroyed" Shelton's credibility since it would have established his accusations against defendant were false. It is true that a false statement made by a witness is relevant to impeach the witness's credibility. (*People v. Tidwell* (2008) 163 Cal.App.4th 1447, 1456.) But to show the statement made in Shelton's application for a restraining order was false, defendant would have had to offer

evidence that someone else committed the theft. It was reasonable for the trial court to conclude that this would have required a mini-trial into an uncharged theft, which would have taken an undue amount of time and created the danger of confusing the issues for the jury. Thus, the court did not err in exercising its discretion to excluding this impeachment evidence pursuant to Evidence Code section 352.

(*People v. Bittaker* (1989) 48 Cal.3d 1046, 1097 [impeachment evidence properly excluded under Evidence Code section 352 where "[t]he value of the evidence as impeachment depends upon proof that the prior charges were false," which would "force the parties to present evidence concerning . . . incidents which never reached the point of formal charges" and "would consume considerable time, and divert the attention of the jury from the case at hand"].)

This modification does not change the judgment.

The petition for rehearing is denied.

FOR THE COURT:

SCOTLAND, P. J.

SIMS, J.

ROBIE, J.